

COMPLAINT INVESTIGATION SUMMARY

COMPLAINT NUMBER:	2089.04
COMPLAINT INVESTIGATOR:	Jennifer Campbell
DATE OF COMPLAINT:	January 28, 2004
DATE OF REPORT:	March 5, 2004
REQUEST FOR RECONSIDERATION:	no
DATE OF CLOSURE:	March 29, 2004

COMPLAINT ISSUES:

Whether the Union School Corporation and the New Castle Area Programs for Exceptional Learners violated:

511 IAC 7-27-4(a)(3) by failing to convene a case conference committee (CCC) meeting upon the request of a parent.¹

During the course of this investigation three additional issues were identified:

Whether the Union School Corporation and New Castle Area Programs for Exceptional Learners violated:

511 IAC 7-21-3(c) by shortening the student's instructional day without the benefit of the CCC.

511 IAC 7-29-1(l) by failing to follow the procedures required by IC 20-8.1-5.1-12 when suspending a student, including a student with a disability.

511 IAC 7-27-7(a) by failing to implement the Student's individualized education program (IEP) as written, specifically, continuing to physically restrain the Student after the parent revoked her consent to the use of physical restraint.

On February 27, 2004, due to the need for additional time to review and investigate the issues, the Director granted an extension of time to March 5, 2004, to complete the complaint investigation report.

FINDINGS OF FACT:

1. The Student is seven years old and is eligible for special education and related services as a student with a communication disorder. The Parent decided to home school the Student and withdrew the Student from School on February 1, 2004.
2. The Complainant states that the Parent had requested a case conference for January 21, 2004, but the Associate Director rescheduled the conference. The parent does not remember to whom she made the request for a CCC meeting or when the request was made, and the parent does not have anything in writing to show that a CCC meeting was in fact scheduled for January 21 or anything in writing to show that the CCC was canceled or rescheduled. It was the Parent's understanding that this conference was

¹ Although the complaint investigation originally included a complaint issue involving alleged violations of 511 IAC 7-27-4(a)(4), this issue was restated as an alleged violation of 511 IAC 7-21-3(c).

rescheduled because the Associate Director could not attend it. The School has no records that show a CCC meeting had been scheduled for January 21, 2004.

3. A BIP was developed for the Student at the CCC convened on November 5, 2003. The BIP was completed subsequent to a "Functional Analysis" that was completed the same day. The BIP addresses two target behaviors: running away and hiding under furniture to escape tasks. For hiding under furniture, the BIP includes seven steps to address the behavior. If the first six steps are not successful, the teacher is to contact the School office, and the School Principal may choose to have the Parent pick the Student up from School. The BIP does not include exclusion from school for more than the remainder of the day in which the Parent is called, nor does it include a shortened school day as a means of addressing either behavior.
4. The Student attended School on January 20, 2004, without behavioral incident, but was absent on January 21, 2004. On January 21st, the School Principal consulted with other staff and determined that the Student would have a shortened instructional day for at least four days, pending a "post medical examination conference." The School Principal sent a letter to the Parent stating that, as the result of consultation with the School Superintendent, the Student's Teacher of Record, the general education teacher and the Associate Director, it was in the Student's best interest to have a shortened school day, beginning January 23 until after the CCC meeting scheduled for January 28. The Parent was not included in this consultation, and no CCC was convened to determine the Student's need for a shortened instructional day.
5. In addition to sending the letter on January 21st, the School Principal telephoned the Parent and requested that the Parent keep the Student home on January 22 as well. The Parent sent the Student to School on January 22, 2004. However, the Superintendent sent the Student home due to the Student's behavior. According to the Complainant, the Student did not want to leave the classroom he was in and go to another classroom. The teachers tried to physically move the Student, and the Student began to kick and scream. The School states that the Student was not hiding under furniture and that the teachers did implement the BIP procedures before calling the Superintendent to intervene and send the Student home. The Superintendent was called because the Principal was out of the office that day. The School Superintendent sent a memo to the Parent on that date, stating that the Student's behavior at school "resulted in the implementation of the behavior plan in place regarding [the Student]." The memo did not provide any detail about the Student's behavior/misconduct and further advised that the School Principal would contact the Parent before the Student returned to School.
6. The Student was absent from school on January 23 and 28. January 26 and 27 were snow days, and students did not attend. The Student attended all day on January 29.
7. Written into the November 5, 2003, IEP Addendum is the following: the Behavior Management Program that the School will follow will include physically restraining the Student if he is a threat to himself or others. The Parent agreed to continue this behavior management program and signed the IEP Addendum. At the CCC meeting on January 28, 2004, the CCC agreed to continue the behavior management program until the completion of the psychiatric evaluation. School staff used physical restraint with the Student on January 29, 2004. Although the Parent reports that she called the school and told them she did not want physical restraint used with her son, the School Principal reports that the Parent asked only that the School not allow the staff who used the physical restraint to continue working with her son. There is nothing in writing regarding the Parent's request that physical restraint no longer be a part of the Student's behavior management plan.

CONCLUSIONS:

1. Finding of Fact #2 indicates there is no documentation that a CCC meeting was requested for, scheduled on, or rescheduled from January 21, 2004. Therefore, no violation of IAC 511 7-27-4(a)(3) is found.
2. Findings of Fact #3, #4, and #6 indicate that a BIP had been developed and included strategies to address running away and hiding behaviors. However, the BIP did not include the consequence of a shortened school day. School staff made a unilateral decision, without benefit of a CCC meeting or parental input, to shorten the Student's instructional day for a period of at least four days. Although the Student was absent two of the four days, and School was closed for inclement weather on the other two days, the decision had been made to shorten the Student's instructional day had the Student been in attendance. Therefore, a violation of 511 IAC 7-21-3(c) is found.
3. Finding of Fact #5 demonstrates that the School requested the Parent not send the Student to School on January 22, 2004. The Student nonetheless attended school that day, but the Superintendent sent the Student home for failing to move from one classroom to another and becoming aggressive when staff attempted to obtain his compliance. Although the Superintendent asserts that the Student being sent home for this behavior was the result of the implementation of the Student's BIP, Finding of Fact #3 establishes that the behavior in which the Student engaged on this date was not one of the two behaviors identified in the BIP. Therefore, the Student's removal was not pursuant to a BIP, but was a temporary unilateral change of placement constitutes a suspension under 511 IAC 7-29-1(l) and requires compliance with IC §20-8.1-5.1-12. IC §20-8.1-5.1-12 requires, among other things, that when a student is suspended, the principal must send a written statement to the parent describing the student's misconduct and the action taken. Finding of Fact #5 reflects that the memo sent to the Parent failed to describe the Student's misconduct. The memo fails to comply with the requirements of IC §20-8.1-5.1-12(d), therefore, a violation of 511 IAC 7-29-1(l) is found.
4. Finding of Fact #7 reflects that the Student's agreed upon IEP and behavior management plan permitted the use of physical restraint. Although the Parent asserts she asked, subsequent to her agreement, that physical restraint be discontinued, there is no documentation to support such request. Therefore, no violation of 511 IAC 7-27-7(a) is found.

The Department of Education, Division of Exceptional Learners requires the following corrective action based on the Findings of Fact and Conclusions listed above.

CORRECTIVE ACTION:

The Union School Corporation and the New Castle Area Programs for Exceptional Learners shall:

1. convene a CCC meeting, no later than March 26, 2004, to:
 - a. review, and if necessary, revise the Student's BIP plan to address the various behaviors that impede the Student's educational progress. The CCC shall consider whether a new FBA needs to be conducted prior to reviewing and revising the existing BIP. As required by 511 IAC 7-17-8, the BIP must include positive behavioral intervention strategies and specify what skills will be taught as part of changing the Student's behavior. The CCC shall also address whether physical restraint will continue to be a part of the Student's BIP.
 - b. Determine whether the Student requires a shortened instructional day, based upon the Student's needs.
 - c. Determine what services the School will make available to the Student should the Parent decide to continue to home school the Student.

- d. Determine the need for compensatory services for removing the Student from School on January 22, 2004.
2. Submit a copy of the CCC Report and agreed upon IEP to the Division no later than April 2, 2004.
3. Provide written information to appropriate staff regarding the requirements of 511 IAC 7-29 and IC §20-8.1-5.1-12 when suspending a student with a disability. A copy of the written notice and a list of recipients shall be submitted to the Division no later than April 2, 2004.
4. Provide written information to appropriate staff regarding the requirements of 511 IAC 7-21-3(c) for determining the length of the instructional day for a student with a disability. A copy of the written notice and a list of recipients shall be submitted to the Division no later than April 2, 2004.